



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS

GEORGE DANIELS
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-2257

Re: Whether coin-operated device sold by the Ray-Full Manufacturing Company is subject to the tax levied by Article 7047a-2, Vernon's Civil Statutes.

In your letter of April 25, 1940, you describe a certain device sold by the Ray-Full Manufacturing Company of San Antonio, and request our opinion as to whether the same is subject to the tax levied under Article 7047a-2 to 12, Vernon's Civil Statutes. You state that this device is attached to a cooler containing bottled drinks. After taking a bottled drink from the cooler, a customer must deposit a five cent coin in the top of such attached coin operated device before he is provided a means for removing the cap from the bottled drink. The deposit of such a coin in the machine automatically provides a cap remover. Such device also tabulates the number of drinks sold from the cooler to which it is attached.

Sections (d) and (f) of Article 7047a-2, Vernon's Civil Statutes, read as follows:

"(d) The term 'merchandise or music coin-operated machine' as used herein shall mean and include every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending

merchandise, commodities, confections or music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: candy machines, gum machines, sandwich machines, handkerchief machines, sanitary drinking cups, phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend merchandise, commodities, confections or music."

"(f) The term 'service coin-operated machines' shall mean and include pay toilets, pay telephones and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure."

Article 7047a-3, Vernon's Civil Statutes, levies a tax on "merchandise or music coin-operated machines" in the amounts therein set out. Article 7047a-4, Vernon's Civil Statutes, reads as follows:

"Gas meters, pay telephones, pay toilets, and cigarette vending machines which are now subject to an occupation or gross receipt tax and 'service coin-operated machines' as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Section."

It is first noted that the service coin operated machines which are exempt from the tax are those which dispense "service only, and not merchandise, music, skill or pleasure". It is a matter of common knowledge that vendors of bottled drinks either open the bottles themselves for the convenience of the customers or provide openers for their use in opening them. Whatever service may be involved in furnishing an opener is purely incidental to the sale of the drink. The machine in question is coin operated. It provides the method of opening the bottle and making the liquid available to the customer. For practical purposes, it has the same thing to do with the sale of the drink as

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would a machine which upon deposit of a nickel would make the bottle available to the customer in the first place. In our opinion, the device which you describe is subject to the tax.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Glenn R. Lewis
Glenn R. Lewis
Assistant

APPROVED MAY 3, 1949

/s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

ORL:pbp:ew/ma